IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

WMI LIQUIDATING TRUST, Plaintiff, v. FEDERAL DEPOSIT INSURANCE CORPORATION, in its corporate capacity, *et al.*, Defendants.	Civil Action No. 1:14-cv-1097 (GMS)

JOINT STATUS REPORT

Pursuant to this Court's Order, dated March 31, 2016 [D. Del. D.I. 115] (the "March Order"), with respect to the motion of WMI Liquidating Trust ("WMILT" or "Trust") for judgment on the pleadings [D. Del. D.I. 50; 51] (the "Motion for Judgment on the Pleadings"), the parties, by and through their respective undersigned counsel, submit this Joint Status Report regarding the above-captioned action styled *WMI Liquidating Trust v. Fed. Deposit Ins. Corp.*, No. 1:14-cv-1097 (GMS) (D. Del.).

Procedural History

On September 20, 2013, the Trust commenced a declaratory action (the "DJ Action") in the United States District Court for the Western District of Washington against the Federal Deposit Insurance Corporation (the "FDIC"), the Board of Governors of the Federal Reserve System (the "FRB"), and the individual Defendants (the "Individual Defendants"), styled *WMI Liquidating Trust v. Fed. Deposit Ins. Corp, et al.*, Case No. C13-1706RAJ (W.D. Wash). By Order, dated July 3, 2013 [Adv. P. D.I. 1], the court transferred venue of the DJ Action to the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), thereby commencing an adversary proceeding. Such proceeding was styled *WMI Liquidating Trust v.*

Fed. Deposit Ins. Corp., *et al.*, Ch. 11 Case No. 08-12229 (MFW), Adv. Pro. No. 14-50435 (MFW) (Bankr. D. Del.). Thereafter, pursuant to a stipulation and this Court's Order, dated March 19, 2015 [D. Del. D.I. 9], this Court withdrew the reference from the Bankruptcy Court.

On April 10, 2015, this Court informally stayed the DJ Action (the "Stay") due to the pendency of an action styled *WMI Liquidating Trust v. Fed. Deposit Ins. Corp.*, No. 1:14-cv-01816 (RBW) (D.D.C) ("APA Action I") and, subsequently, *WMI Liquidating Trust v. Fed. Deposit Ins. Corp.*, No. 1:15-cv-00731 (RBW) (D.D.C.) ("APA Action II," and together with APA Action I, the "APA Actions") before the Honorable Reggie B. Walton in the United States District Court for the District of Columbia.[1] The Stay was extended several times by this Court and expired by its own terms on May 16, 2016.

Statement of the Trust on Remaining Issues

1. The APA Actions

As set forth in detail in the Previous Status Reports, on August 19, 2015, District Judge Walton entered a final judgment with respect to APA Action I, holding that the FDIC did not act arbitrarily or capriciously in denying a payment application submitted by the Trust or in concluding that the Trust is precluded from making payments to certain claimants pursuant to settlement agreements. *See WMI Liquidating Trust v. Fed. Deposit Ins. Corp.*, No. 1:14-cv-01816 (RBW), 110 F. Supp. 3d 44 (D.D.C. 2015); [D.D.C. APA I D.I. 42]. APA Action II concluded on April 15, 2016, when District Judge Walton upheld a second FDIC determination and held that the Trust is barred from making any payments to the claimants in any amount [D.D.C. APA II D.I. 25].

[1] Prior Status Reports were filed on April 6, 2015 [D. Del. D.I. 13], May 12, 2015 [D. Del. D.I.29], June 15, 2015 [D. Del. D.I. 36], August 12, 2015 [D. Del. D.I.37], October 19, 2015 [D. Del. D.I.39], January 4, 2016 [D. Del. D.I. 41], March 14, 2016 [D. Del. D.I. 46], and April 25, 2016 [D. Del. D.I. 47] (collectively, the "Previous Status Reports").

2. The DJ Action

The below chart sets forth a summary of the status of the claims, counterclaims, and cross-claims asserted in the instant DJ Action.

Trust's Claims in November 5, 2013 Amended Complaint [D. Del. D.I. 33]	
Count	**Status**
I - XI	Resolved. • Dismissed as to the FDIC and FRB pursuant to this Court's Order, dated October 12, 2016 [D. Del. D.I. 88] (the "October Order"), as amended on October 19, 2016 [D. Del. D.I. 89]. • Unclear whether dismissed as to Individual Defendants pursuant to footnote 4 of the March Order. However, in order to allow the Trust's Motion for Partial Judgment (as defined below) to proceed, the Trust would agree to stipulate to such dismissal based on the reasoning in the October Order, the March Order, and the Court's Order, dated February 15, 2017 [D. Del. D.I. 114] (the "February Order").
XII - XVI[2]	Partially resolved. • Dismissed as to the FDIC and FRB pursuant to the October Order. • Pending as to Individual Defendants.
XVII - XIX	Resolved. • Stricken as per this Court's Order, dated August 24, 2016 [D. Del. D.I. 68] (the "August Order").

[2] *See infra* ¶ 1.b.ii for description.

<table>
<tr><th colspan="6">Individual Defendants' Counterclaims and Cross-claims</th></tr>
<tr><th colspan="2">Party</th><th>Pleading Docket No.</th><th>Status of Claims Asserted Against FDIC</th><th>Status of Claims Asserted Against FRB</th><th>Status of Claims Asserted Against the Trust</th></tr>
<tr><td rowspan="6">GROUP 1</td><td>1. Craig E. Tall</td><td>W.D. Wash. D.I. 146</td><td rowspan="6">Resolved.
The FDIC's Motion for Judgment on the Pleadings [D. Del. D.I. 101] was granted in favor of the FDIC on all cross-claims asserted against it pursuant to the February Order.</td><td rowspan="6">Pending.
The FRB's Motion to Dismiss has not been addressed by this Court [Adv. Pro. D.I. 44].</td><td rowspan="6">Resolved.
The Trust's Motion for Judgment on the Pleadings on Count One [D. Del. D.I. 50] was granted in favor of the Trust pursuant to the March Order.[3]</td></tr>
<tr><td>2. Susan Allison</td><td>W.D. Wash. D.I. 171</td></tr>
<tr><td>3. Jeffrey Jones</td><td>W.D. Wash. D.I. 172</td></tr>
<tr><td>"Baker Defendants"
4. Todd H. Baker
5. Sean Becketti
6. Anthony Joseph Bozzuti
7. Alfred Brooks
8. Gregory C. Camas
9. Thomas W. Casey
10. Deborah D. Horvath
11. Rajiv Kapoor
12. Marc Malone
13. John P. McMurray
14. Thomas E. Morgan
15. Stephen J. Rotella
16. David Schneider
17. Genevieve Smith
18. Radha Thompson
19. Ann Tierney
20. Robert J. Williams, Jr.</td><td>W.D. Wash. D.I. 173</td></tr>
<tr><td>21. Robert Batt</td><td>W.D. Wash. D.I. 174</td></tr>
<tr><td>22. Patricia Schulte</td><td>W.D. Wash. D.I. 175</td></tr>
</table>

[3] With respect to the claims asserted by the Baker Defendants, Defendant Tall, Defendant Allison, Defendant Batt, Defendant Jones, Defendant Schulte, Defendant Shaw, Defendant Stearns, Defendant Melby, Defendant McCarthy, Defendant Sorenson, and Defendant Fukui, only Count One appears to relate to the Trust.

Individual Defendants' Counterclaims and Cross-claims					
	Party	**Pleading Docket No.**	**Status of Claims Asserted Against FDIC**	**Status of Claims Asserted Against FRB**	**Status of Claims Asserted Against the Trust**
	23. Scott Shaw	W.D. Wash. D.I. 176			
	24. Steven Kenneth Stearns	W.D. Wash. D.I. 177			
	25. Randy Melby	W.D. Wash. D.I.. 178			
	26. Michelle McCarthy	W.D. Wash. D.I. 179			
GROUP 2	1. Jacob E. Sorenson	Adv. Pro. D.I. 36	Resolved. The FDIC's Motion for Judgment on the Pleadings [D. Del. D.I. 101] was granted in favor of the FDIC on all cross-claims asserted against it pursuant to the February Order.	Pending. The FRB's Motion to Dismiss has not been addressed by this Court [Adv. Pro. D.I. 76].	Resolved. The Trust's Motion for Judgment on the Pleadings on Count One [D. Del. D.I. 50] was granted in favor of the Trust pursuant to the March Order.[4]
	2. Keith O. Fukui	Adv. Pro. D.I. 37			
GROUP 3	"Bjorklund Defendants" 1. Robert Bjorklund 2. Kimberly Cannon 3. Daryl David 4. Michael Reynoldson 5. Chandan Sharma	D. Del. D.I. 70	Resolved. The FDIC's Motion for Judgment on the Pleadings [D. Del. D.I. 101] was granted in favor of the FDIC on all cross-claims asserted against it pursuant to the	Resolved. All claims against the FRB were dismissed pursuant to the February Order.	Pending. The Trust filed its Motion for Judgment on the Pleadings over two months prior to the Bjorklund Defendants', Bartels
	"Bartels Defendants" 6. Melba Ann Bartels 7. Kenneth E. Kido 8. Steven F. Stein 9. Mitchell Stevens	D. Del. D.I. 71			

[4] *See supra* note 3.

Individual Defendants' Counterclaims and Cross-claims					
Party		Pleading Docket No.	Status of Claims Asserted Against FDIC	Status of Claims Asserted Against FRB	Status of Claims Asserted Against the Trust
	10. Anthony F. Vuoto		February Order.		Defendants', and Defendant Murphy's assertion of their counterclaims. Accordingly, such counterclaims were not subject to the March Order and remain pending as against the Trust.[5]
	11. John H. Murphy	D. Del. D.I. 72			

a. The Trust's Claims as to the FDIC and the FRB

As set forth above, the Trust's Counts I through XVI of the Amended Complaint [D. Del. D.I. 33] were dismissed as to the FDIC and FRB pursuant to the October Order.

b. Remaining Unresolved Claims and Motions

i. The Trust's Counts I Through XI as to the Individual Defendants

As set forth above, it is unclear whether, pursuant to footnote 4 of this Court's March Order, the Trust's Counts I through XI as to the Individual Defendants were dismissed. However, the Trust would agree to stipulate to such dismissal based on the reasoning in the October Order, the February Order and the March Order in order to allow the Trust's Motion for Partial Judgment (as defined below) to proceed.

[5] With respect to the counterclaims asserted by the Bjorklund Defendants, the Bartels Defendants and Defendant Murphy, only Counts One, Two, and Three appear to relate to the Trust.

ii. The Trust's Counts XII Through XVI Remain Pending as to the Individual Defendants

As set forth above, Counts XII through XVI, which arise under the "automatic termination regulations," 12 C.F.R. § 163.39, remain pending with respect to the Individual Defendants (the "ATR Counts").

iii. Certain Counterclaims and Cross-Claims Asserted by the Individual Defendants Remain Pending

On September 7, 2016, the Bjorklund Defendants, Bartels Defendants, and Defendant Murphy filed their answers, affirmative defenses, counterclaims, and cross-claims [Dkt. Nos. 70; 71; 72]. As such pleadings were filed over two months after the Trust filed its Motion for Judgment on the Pleadings on June 28, 2016, the counterclaims asserted therein were not subject to the March Order and remain pending. As the counterclaims largely mirror those which were just addressed in the March Order, the Bjorklund Defendants, Bartels Defendants, and Defendant Murphy have indicated that they would agree to stipulate to the dismissal of such counterclaims.[6]

The cross-claims asserted by the Group One and Group Two Individual Defendants [W.D. Wash D.I. 146; 171; 172; 173; 174; 175; 176; 177; 178; 179; Adv. Pro. D.I. 36; 37] against the FRB are still pending as the FRB's motions to dismiss have not yet been addressed by this Court [Adv. Pro. D.I. 44; 76].

iv. Messrs. Rotella and Schneider's Motion to Amend Remains Pending

On January 7, 2015, Defendants Stephan J. Rotella and David Schneider moved for leave to amend their counterclaims ("Motion to Amend"). *WMI Liquidating Trust v. FDIC*, Adv. Pro. No. 14-50435-MFW (Bankr. D. Del.) [Dkt. No. 162]. In the March Order, this Court noted that "the requested amendment is immaterial to the counterclaims at issue" and "the court can

[6] The Individual Defendants believe that all remaining issues should be resolved at this time, either through a mutually agreed form of judgment or mutual dismissal of claims.

determine whether the Trust is entitled to judgment as a matter of law." March Order, at 2. Accordingly, while the Court ruled on the Trust's Motion for Judgment on the Pleadings, the Motion to Amend remains pending.

3. The Trust's Proposal for the Resolution of Remaining Matters in the DJ Action

The Trust, FDIC, FRB, and counsel to certain of the Individual Defendants have been discussing entry of a proposed final judgment with respect to the Trust's Counts I through XI and to all asserted counterclaims related to 12 U.S.C. § 1828(k) and the "golden parachute regulations," 12 C.F.R. § 359, *et seq*. In furtherance thereof, the Trust intends to file a motion pursuant to Rule 54(b) of the Federal Rules of Civil Procedure seeking entry of such proposed final judgment (the "Motion for Partial Judgment"). Additionally, subject to entry of a final judgment in accordance with such motion, the Trust shall agree to hold the ATR Counts in abeyance pending expiration of the appeal period with respect to such judgment or the final adjudication of any appeal taken with respect thereto.

Statement of the Individual Defendants on Remaining Issues[7]

1. The APA Actions Are Irrelevant to These Proceedings.

As the Individual Defendants have asserted throughout these proceedings, the APA Actions are immaterial to the above-captioned action.[8] The APA Actions involved an alleged

[7] The Individual Defendants who have participated in this response are: Melba Bartels, Kenneth Kido, Steven Stein, Mitchell Stevens, Anthony Vuoto, Todd H. Baker, Sean Becketti, Anthony Joseph Bozzuti, Alfred Brooks, Thomas W. Casey, Gregory C. Camas, Deborah D. Horvath, Rajiv Kapoor, Marc Malone, John P. McMurray, Thomas E. Morgan, Stephen J. Rotella, David Schneider, Genevieve Smith, Craig E. Tall, Radha Thompson, Ann Tierney, Robert J. Williams, Jr., John H. Murphy, Kimberly Cannon, Daryl David, Michael Reynoldson, Robert Bjorklund, Chandan Sharma, Susan Allison, Robert Batt, Jeffrey Jones, Michelle McCarthy, Randy Melby, Patricia Schulte, Scott Shaw, Stephen Kenneth Stearns, Keith Fukui and Jacob Sorenson.

[8] For the reasons expressed herein, counsel for the Individual Defendants requested that Trust Counsel remove its discussion of the APA Actions from this joint submission to the Court. *Supra* at 2. Trust Counsel refused this request.

dispute between WMILT, as plaintiff, and the FDIC, as defendant, in which those parties did not contest or litigate the threshold issues presented by this action - namely, whether WMILT is a "covered company" pursuant to the express definition thereof in 12 U.S.C. § 1828(k)(5)(D). In the APA Actions, WMILT and the FDIC bypassed this issue altogether and essentially stipulated to the applicability of the golden parachute regulations and the FDIC's jurisdiction thereunder.[9]

Despite WMILT's attempt to insert the outcome of the APA Actions into these proceedings, the Claimants believe that a plain reading of the Orders confirms that none of the substantive rulings in the APA Actions are incorporated into the October Order or the March Order.

2. The DJ Action.

The Individual Defendants recognize that, pursuant to the October Order and the March Order, the Court has determined that (i) jurisdiction does not exist to adjudicate the "covered company" claims through these declaratory judgment proceedings and (ii) that 12 U.S.C. § 1828(k) does not provide for a private right of action that would permit the parties to assert valid declaratory claims. For these reasons, as set forth in the Trust's statement above, since the counterclaims of the Bjorklund Defendants, Bartels Defendants, and Defendant Murphy largely mirror those which were addressed in the March Order, those Defendants would be willing to stipulate to the dismissal of their counterclaims based on the reasoning in the October Order and the March Order in order to allow a mutually agreed upon form of judgment to be entered and subject to mutual dismissal of the remaining claims by the Trust.

[9] The Individual Defendants disagree with the Trust's characterization of APA Order II. *Supra* at 2. In that Order, Judge Walton did not expressly hold, as the Trust represents, "that the Trust is barred from making any payments to the claimants in any amount."

The Individual Defendants believe that all remaining claims should be resolved at this time, not only the Trust's Counts I through XI and the asserted counterclaims, and that judgment should be entered accordingly. The Individual Defendants will work diligently with the Trust in order to prepare a mutually acceptable form of judgment that fully resolves the issues before the Court. If, however, the parties are unable to reach agreement on a form of judgment that encompasses all remaining claims asserted by the Trust and the Individual Defendants in their respective pleadings, the Individual Defendants reserve their right to file a motion with the Court that seeks an adjudication on all remaining claims in the DJ Action.

Statement of the FRB on Remaining Issues

On February 15, 2017, the Court granted the FRB's motion to dismiss certain cross-claims filed against the FRB in this Court. The only remaining claims against the FRB are certain cross-claims that were filed while this case was pending in the United States District Court for the Western District of Washington and the Bankruptcy Court, and which request the same declaratory relief as the cross-claims that were dismissed by the Court's February 15, 2017 order. The FRB's motions to dismiss those cross-claims remain pending. See Adv. Pro. D.I. 44 and Adv. Pro. D.I. 76.

Statement of the FDIC on Remaining Issues

The FDIC does not have any additional comments.

Dated: May 1, 2017
Wilmington, Delaware

/s/ Amanda R. Steele
Mark D. Collins, Esq. (No. 2981)
Marcos A. Ramos (No. 4450)
Amanda R. Steele (No. 5530)
RICHARDS, LAYTON & FINGER, P.A.
One Rodney Square
920 North King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

- and -

Brian S. Rosen, Esq. (admitted *pro hac vice)*
John P. Mastando III, Esq. (admitted *pro hac vice)*
Erin M. James, Esq. (*pro hac vice* pending)
WEIL, GOTSHAL & MANGES LLP
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Attorneys for WMI Liquidating Trust

/s/ Barbara Katron
BARBARA KATRON
Senior Counsel
ERIK BOND, N.Y. Bar No. 4316030
Counsel, Corporate Litigation Unit
erbond@FDIC.gov
THE FEDERAL DEPOSIT INSURANCE CORPORATION
3501 N. Fairfax Drive, D-7026
Arlington, VA 22226
Telephone: (703) 562-6461
Fax: (703) 562-2477
Attorneys for Defendant Federal Deposit Insurance Corporation

*/s/ Katherine H. Wheatley*__________________
Katherine H. Wheatley
Associate General Counsel
BOARD OF GOVERNORS OF THE
FEDERAL
RESERVE SYSTEM
20th & C Streets, N.W.
Washington, D.C. 20551
Telephone: (202) 452-3779
Facsimile: (202) 736-5615
Email: kit.wheatley@frb.gov
Counsel for Board of Governors of the Federal Reserve System

*/s/ Michael Joseph Joyce*_________________
Michael Joseph Joyce, Esquire (#4563)
O'KELLY & ERNST, LLC
901 N. Market Street
Suite 1000
Wilmington, DE 19801
Telephone: 302-778-4000
Facsimile: 302-295-2873
E-mail: mjoyce@oelegal.com
Counsel to Individual Defendant John H. Murphy

*/s/ Michael Joseph Joyce*_________________
Michael Joseph Joyce, Esquire (#4563)
O'KELLY & ERNST, LLC
901 N. Market Street
Suite 1000
Wilmington, DE 19801
Telephone: 302-778-4000
Facsimile: 302-295-2873
E-mail: mjoyce@oelegal.com

-and-

Stephan Kyle, Esquire
KYLE LAW CORPORATION
230 California Street, Suite 600
San Francisco, CA 94111
Direct 415-839-8110
Main 415-839-8100
Fax 415-839-8189
skyle@kylelawcorp.com
Co-Counsel for Individual Defendant Anthony Vuoto, Melba Bartels, Kenneth Kido, Steven Stein, Mitchell Stevens, Todd H. Baker, Sean Becketti, Anthony Joseph Bozzuti, Alfred Brooks, Thomas W. Casey, Gregory C. Camas, Deborah D. Horvath, Rajiv Kapoor, Marc Malone, John P. McMurray, Thomas E. Morgan, Stephen J. Rotella, David Schneider, Genevieve Smith, Craig E. Tall, Radha Thompson, Ann Tierney, Robert J. Williams, Jr.

*/s/ Michael Busenkell*____________________
Michael Busenkell, Esquire (#3933)
GELLERT SCALI BUSENKELL
& BROWN, LLC
913 N. Market Street, 10th Floor
Wilmington, DE 19801
Telephone: 302−425−5812
Facsimile: 302-425-5814
Email: mbusenkell@gsbblaw.com
Counsel to Individual Defendants Susan Allison, Robert Batt, Jeffrey Jones, Michelle McCarthy, Randy Melby, Patricia Schulte, Scott Shaw, and Stephen Kenneth Stearns

*/s/ Michael Joseph Joyce*_________________
Michael Joseph Joyce, Esquire (#4563)
O'KELLY & ERNST, LLC
901 N. Market Street
Suite 1000
Wilmington, DE 19801
Telephone: 302-778-4000
Facsimile: 302-295-2873
E-mail: mjoyce@oelegal.com

-and-

Robyn B. Sokol, Esquire
EZRA BRUTZKUS GUBNER LLP
21650 Oxnard St., Suite 500
Woodland Hills, CA 91367-4911
Main: 818-827-9000
Direct: 818-827-9108
Facsimile: 818-827-9051
rsokol@ebg-law.com
Co-Counsel to Individual Defendants Kimberly Cannon, Daryl David, Michael Reynoldson, Robert Bjorklund and Chandan Sharma

/s/ Joseph McMahon, Jr.
Daniel K. Astin (No. 4068)
John D. McLaughlin, Jr. (No. 4123)
Joseph McMahon, Jr. (No. 4819)
CIARDI CIARDI & ASTIN
1204 North King Street
Wilmington, DE 19801
Telephone: (302) 658-1100
Facsimile: (302) 658-1300
jmcmahon@ciardilaw.com

-and-

Anthony Sodono, III, Esq.
Ross J. Switkes, Esq.
TRENK, DIPASQUALE, DELLA FERA & SODONO, P.C.
347 MOUNT Pleasant Avenue, Suite 300
West Orange, NJ 07052
Telephone: (973) 243-8600
Facsimile: (973) 243-8677

Counsel to Individual Defendants Keith O. Fukui and Jacob E. Sorensen